UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

SIEMENS DEMATIC CORP.[1]

Employer,

and Case 27-RC-8348

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 354

Petitioner.

DECISION AND ORDER

On September 20, 2004, International Brotherhood of Electrical Workers, Local 354, filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking an election among a bargaining unit described as "Electricians installing automation equipment in Grantsville, Utah."

A hearing in this matter was held on September 29, 2004. At the hearing, the Petitioner and the Employer stipulated that the following unit would be an appropriate unit for purposes of collective bargaining, should I direct an election in this proceeding:

> "Included: All regular full-time and part-time journeymen and apprentice electricians installing automation equipment at the construction site in Grantsville, Utah.
>
> Excluded: All office clericals, guards, and supervisors as defined in the Act and all other employees."

[1] The name of the Employer appears as amended at the hearing.

The parties agree that the sole issue to be determined is whether, given the time remaining for the Employer to perform work on the Grantsville jobsite, it is appropriate to direct an election in the stipulated unit. The Employer contends that an election in the stipulated unit is inappropriate and that the petition should be dismissed, because of the short time remaining for the Employer to perform work on the Grantsville jobsite and because the employees in the unit have no reasonable expectation of continued employment with the Employer. The Petitioner argues that an election in the stipulated unit is appropriate, because employees in the unit will continue performing work on the Grantsville jobsite for a long enough period of time to warrant directing an election. For the reasons set forth below, I find it would not effectuate the policies of the Act to conduct an election in this case and the petition should be dismissed.

Under Section 3(b) of the Act, I have been delegated by the Board its powers in connection with this case.

Upon the entire record in this case, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, Siemens Dematic Corp. is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization involved claims to represent certain employees of the Employer.

[2] The Employer is a New York corporation engaged in the manufacture and installation of conveyor equipment at various customer locations throughout the United States, including a project located in Grantsville, Utah. During the past year, in the course and conduct of its business operations, the Employer has purchased and received at its Grantsville, Utah jobsite goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Utah.

4. Based upon the record, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

FACTS

The Employer is engaged in the business of manufacturing and installing conveyor equipment for various business entities. The Employer is currently involved in the installation and support of conveyor equipment at a Wal-Mart Distribution Center being constructed in Grantsville, Utah.

Harry Howes, the Employer's Electrical Supervisor for the Grantsville jobsite testified with respect to the Employer's operation at this location. According to Howes, the manufacture and installation of the Employer's conveyor systems involves numerous facets, including the manufacture of the conveyor system; physical installation of the various components of the mechanical system; and the installation of the electrical conduit, wiring and piping needed to operate the mechanical system. The mechanical portion of the system is installed first, and the installation of the electrical system follows. The employees in the stipulated unit are installing the electrical system at the Grantsville jobsite.

Howes testified without contradiction that the Employer has followed its usual practice with respect to performing the necessary electrical work at the Grantsville jobsite. Under that practice, the Employer first brings a number of its own electrical employees, called travelers, to a given jobsite. If more electricians are needed, the Employer supplements its own employee workforce with local electricians. If they are needed, the Employer generally advertises for local electricians in area newspapers or utilizes the services of the local unemployment office to staff

those additional positions. At the conclusion of a project, the Employer's traveling employees move on to another jobsite, and local hires are terminated.

Howes testified that the first journeyman electricians and apprentices began working on the Grantsville jobsite on or about August 9, 2004. From August 11 to September 20, 2004, additional electricians were hired or brought to the Grantsville jobsite as needed. At the time of hearing, there were approximately 22 journeymen and/or apprentices at the Grantsville jobsite. Of this number, six were traveler employees and the rest were local hires.

In deciding which local applicants to hire for the Grantsville jobsite, Howes reviewed resumes submitted by the local applicants and conducted interviews with each applicant. During these interviews, Howes informed each applicant of the hours they would be working and the type of work and responsibilities included in their particular position. Howes also informed each applicant that the work would be completed by February 2005, and that once the project was completed, they would be terminated. Petitioner witness Boyce Christensen, a journeyman electrician who began working at the Employer's Grantsville jobsite on August 24, 2004, confirmed this application and interview process.

Howes testified that, although the electrical portion of the project would end completely by February 28, 2005, the work will begin to "wind down" prior to that date. As the project moves toward completion, Howes stated that fewer electricians will be needed on the Grantsville jobsite and that electricians will be released accordingly. Howes further testified that, based upon information he received from the project manager, the project was on schedule and that, based upon that schedule, approximately seven of the electricians will be laid off between mid-December 2004 and January 1, 2005. He stated that local hires will be the first electricians released.

Thereafter, as other portions of the project are completed, additional electricians will be released. Petitioner witness Christensen testified that, based on his observations, the Employer's portion of the work appeared to be proceeding according to schedule. He further stated that he thought another electrical contractor's work seemed to be behind schedule and that this might delay the Employer's completion date. Christensen testified that he had no specific knowledge regarding the schedule of any contractor on the Grantsville jobsite other than the Employer. Howes testified that he has no knowledge that any other contractor at the Grantsville jobsite is behind schedule.

In the final phase of the Employer's work on the Grantsville jobsite, which will occur between February 28 and April 18, 2005, the Employer will retain four traveler electricians to assist with testing the operation of the system and with customer support.

Michael Lawson, the Employer's Electrical Installation Manager, testified that he is responsible for overseeing the work of supervisors on the Employer's various jobsites. His duties include general oversight of the projects; making sure the projects are on schedule; ensuring that the projects stay within their financial budgets, and making certain that the jobsite supervisors have the resources they need to get the job done. In addition, Lawson is responsible for passing along information the supervisors might need from project management or engineering. Lawson's geographic jurisdiction encompasses the entire United States, and he currently has responsibility for between 30 to 35 projects.

Lawson testified without contraction that the Employer has no other installation projects scheduled within the State of Utah and that there are no projects in Utah on which the Employer has placed a bid to do work. Lawson stated that the Employer's most recent installation projects in Utah prior to the Grantsville jobsite were in 1993 or 1994, when the Employer installed a

conveyor system in a Wal-Mart Distribution Center located in Hurricane, Utah. Several years prior to the Hurricane job, the Employer installed a conveyor system for Fingerhut Corporation in Provo, Utah.

ANALYSIS

There have been numerous Board decisions establishing that, where an employer's operations are scheduled for imminent completion, no useful purpose would be served by directing an election. See *Davey McKee Corp.*, 308 NLRB 839 (1992), and the cases cited therein. For instance, in *M. B. Kahn*, 210 NLRB 1050 (1974), the Board refused to direct an election where about five months of work remained at the time the regional director issued a decision. In *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974), the Board dismissed a petition which was filed approximately four and one-half months before the plant was scheduled to be closed. Also, in *Plum Creek Lumber Co.*, 214 NLRB 619 (1974), the Board determined that it would not effectuate the policies of the Act to hold an election in a unit scheduled to undergo "imminent substantial contraction" within four months. See also *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Larsen Plywood Co.*, 223 NLRB 1161 (1976); *Armour & Co.*, 62 NLRB 1194 (1945). In light of these cases, I find that it would not effectuate the purposes and policies of the Act to direct an election in this matter.

Petitioner's claim that the Board's holding in *E.I. du Pont de Nemours and Company*, 117 NLRB 1048 (1957), warrants an election in the instant case is not persuasive. In *E. I. Du Pont*, the Employer contended that no election could be held in a maintenance unit because portions of the unit were going to be phased out by order of the Atomic Energy Commission. The Board determined that a substantial compliment of employees would continue working for at least the next six months and that there was "the possibility that the Atomic Energy

Commission's order may be revoked before the final shutdown." In the instant case there is no such possibility that the Employer will continue working on the Grantsville jobsite after April 18, 2005. In addition, for six weeks prior to that date, unlike the facts in *E. I. du Pont*, the Employer will be operating only a small fraction of its original complement of employees. Petitioner's reliance on *Norfolk Maintenance Corporation*, 310 NLRB 527 (1993), is also misplaced. In that case, the Board found that the Employer's intention to cease performing services when its contract with the United States government expired was thwarted by the fact that the contract allowed the government to extend the contract, at its discretion, for up to six months. The uncertainty of whether or not such an extension would be sought was a sufficient basis to warrant holding the election. In the instant case, no such option for an extension exists. Rather, Howes testified that April 18, 2005 is a "hard date" upon which the Employer will cease performing services at the Grantsville jobsite.

As noted above, the Employer's witnesses testified without contradiction that the Grantsville jobsite would be substantially completed by mid-December 2004 or early January 2005. At that time, at least one-third of the stipulated unit employees will be permanently released. Between that release date and February 28, 2005, employees will continue to be released when various portions of the work are completed and by February 28, 2005, only four employees in the stipulated unit will remain on the Grantsville jobsite. Those remaining four employees will be permanently released on or before April 18, 2005 when the project is completed.

In view of this release schedule, the Employer's relevant operations, unlike those in *E. I. du Pont*, will begin significant reductions within two and one-half months of the date of this decision. In addition, the vast majority of the work on the Grantsville jobsite will be completed

within approximately four and one-half months of the date of this decision, and the project will be totally completed six weeks later.

Based upon the above, I find that the Employer's project at the Grantsville jobsite is scheduled for imminent completion. When this project is completed, the Employer will have no further projects in the State of Utah involving the stipulated unit employees. Since the Employer has no other projects under bid, and there are no prospects for any similar bids in the near future, the current stipulated unit employees have no reasonable expectation of continuing their employment or being rehired on a future project.

In accordance with the foregoing discussion, it does not appear that the Employer will employ the employees in the stipulated unit for a sufficient period of time to warrant directing an election in this matter. Similarly, the record evidence does not establish any reasonable likelihood that the Employer will employ the employees in the stipulated unit at any time in the future.

Therefore, in accordance with the aforementioned Board law, I find that it would not effectuate the policies of the Act to conduct an election in this case. However, should the stipulated unit remain in existence for a substantially longer period of time than is now anticipated, or should the Employer acquire additional construction projects in the geographic region contemplated by the Unit description, I will entertain a motion by the Petitioner to reinstate the petition.

ORDER

Inasmuch as I have found that the Employer's work at the Wal-Mart Distribution Center in Grantsville, Utah is nearing imminent completion and the employees in the stipulated unit

have no expectation of continued employment beyond the next few months, it would serve no useful purpose to direct an election in this matter. I shall, therefore, dismiss the petition.[3]

Dated at Denver, Colorado this 15th day of October 2004.

/s/ B. Allan Benson
B. Allan Benson
Regional Director, Region 27
National Labor Relations Board
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[3] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street. NW, Washington, DC 20570. In order to be timely filed, a request for review must be received by the Board in Washington by October 29, 2004.